

***Superseded 7/1/2015***

**19-6-420 Releases -- Abatement actions -- Corrective actions.**

- (1) If the director determines that a release from a petroleum storage tank has occurred, he shall:
  - (a) identify and name as many of the responsible parties as reasonably possible; and
  - (b) determine which responsible parties, if any, are covered by the fund regarding the release in question.
- (2) Regardless of whether the tank generating the release is covered by the fund, the director may:
  - (a) order the owner or operator to take abatement, investigative, or corrective action, including the submission of a corrective action plan; and
  - (b) if the owner or operator fails to take any of the abatement, investigative, or corrective action ordered by the director, the director may take any one or more of the following actions:
    - (i) subject to the conditions in this part, use money from the fund, if the tank involved is covered by the fund, state cleanup appropriation, or the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7 to perform investigative, abatement, or corrective action;
    - (ii) commence an enforcement proceeding;
    - (iii) enter into agreements or issue orders as allowed by Section 19-6-424.5; or
    - (iv) recover costs from responsible parties equal to their proportionate share of liability as determined by Section 19-6-424.5.
- (3)
  - (a) Subject to the limitations established in Section 19-6-419, the director shall provide money from the fund for abatement action for a release generated by a tank covered by the fund if:
    - (i) the owner or operator takes the abatement action ordered by the director; and
    - (ii) the director approves the abatement action.
  - (b) If a release presents the possibility of imminent and substantial danger to the public health or the environment, the owner or operator may take immediate abatement action and petition the director for reimbursement from the fund for the costs of the abatement action. If the owner or operator can demonstrate to the satisfaction of the director that the abatement action was reasonable and timely in light of circumstances, the director shall reimburse the petitioner for costs associated with immediate abatement action, subject to the limitations established in Section 19-6-419.
  - (c) The owner or operator shall notify the director within 24 hours of the abatement action taken.
- (4)
  - (a) If the director determines corrective action is necessary, the director shall order the owner or operator to submit a corrective action plan to address the release.
  - (b) If the owner or operator submits a corrective action plan, the director shall review the corrective action plan and approve or disapprove the plan.
  - (c) In reviewing the corrective action plan, the director shall consider the following:
    - (i) the threat to public health;
    - (ii) the threat to the environment; and
    - (iii) the cost-effectiveness of alternative corrective actions.
- (5) If the director approves the corrective action plan or develops his own corrective action plan, he shall:
  - (a) approve the estimated cost of implementing the corrective action plan;
  - (b) order the owner or operator to implement the corrective action plan;
  - (c)
    - (i) if the release is covered by the fund, determine the amount of fund money to be allocated to an owner or operator to implement a corrective action plan; and

- (ii) subject to the limitations established in Section 19-6-419, provide money from the fund to the owner or operator to implement the corrective action plan.
- (6)
  - (a) The director may not distribute any money from the fund for corrective action until the owner or operator obtains the director's approval of the corrective action plan.
  - (b) An owner or operator who begins corrective action without first obtaining approval from the director and who is covered by the fund may be reimbursed for the costs of the corrective action, subject to the limitations established in Section 19-6-419, if:
    - (i) the owner or operator submits the corrective action plan to the director within seven days after beginning corrective action; and
    - (ii) the director approves the corrective action plan.
- (7) If the director disapproves the plan, he shall solicit a new corrective action plan from the owner or operator.
- (8) If the director disapproves the second corrective action plan, or if the owner or operator fails to submit a second plan within a reasonable time, the director may:
  - (a) develop his own corrective action plan; and
  - (b) act as authorized under Subsections (2) and (5).
- (9)
  - (a) When notified that the corrective action plan has been implemented, the director shall inspect the location of the release to determine whether or not the corrective action has been properly performed and completed.
  - (b) If the director determines the corrective action has not been properly performed or completed, he may issue an order requiring the owner or operator to complete the corrective action within the time specified in the order.